

ZONING BOARD OF APPEALS
MINUTES
JANUARY 22, 2019

The meeting was called to order by ZBA Chairperson Greg Constantino at 7:00 p.m. ZBA Members Matt Jones, John Micheli, Chip Miller and Tom Whalls were present. ZBA Members Steve Lucchesi, Reed Panther and ZBA Student Intern Maddie Greenleaf were excused. Also present were Village Planner Kelly Purvis.

ZBA Chairperson Constantino explained the procedures of the Zoning Board of Appeals (ZBA).

MINUTES

ZBA Member Miller moved, seconded by ZBA Member Jones, to approve the minutes of the December 11, 2018 meeting. The motion carried unanimously with a voice vote.

On the agenda was the continuation of a public hearing regarding the property at 787 Crescent Boulevard.

ZBA Chairperson Constantino stated all members of the Zoning Board of Appeals have visited the property and are aware of the proposed plans.

A motion was made by ZBA Member Miller and seconded by ZBA Member Micheli to reopen the public hearing for 787 Crescent Boulevard at 7:02 p.m. The motion carried unanimously with a voice vote.

PUBLIC HEARING – 787 Crescent Boulevard

PETITIONERS LEISHA MCCREADY AND JOHN KEEL ARE REQUESTING APPROVAL FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS TO ALLOW A WALKWAY AND A PATIO TO REMAIN CLOSER TO THE LOT LINE THAN IS PERMITTED BY CODE. 1. SECTION 10-5-4(A)4(b) TO ALLOW A PATIO TO REMAIN AT A DISTANCE OF 1.3 FEET FROM THE PROPERTY LINE IN LIEU OF OBSERVING THE SAME SETBACK REQUIRED OF THE PRINCIPAL STRUCTURE ON THE LOT, IN THIS CASE 13.6 FEET. 2. SECTION 10-5-5(C)1 TO ALLOW A WALKWAY TO REMAIN AT A DISTANCE OF 1.68 FEET FROM THE PROPERTY LINE IN LIEU OF THE REQUIRED IMPERVIOUS SURFACE SETBACK OF 6.8 FEET (5% OF THE LOT WIDTH). 3. ANY OTHER ZONING RELIEF NECESSARY TO ALLOW THE PATIO AND WALKWAY TO REMAIN WHERE THEY ARE DEPICTED ON THE PLAT OF SURVEY DATED NOVEMBER 14, 2018.

(Leisha McCready and John Keel, owners of the property at 787 Crescent Boulevard)

ZBA Chairperson Constantino welcomed everyone back for this continued public hearing and stated as there are no new faces, there is no need to swear anyone new in.

Staff Presentation

Village Planner Kelly Purvis was present to speak regarding the proposed variation request and stated petitioners Leisha McCready and John Keel are the owners of the property at 787 Crescent Boulevard.

Village Planner Purvis stated the petitioners are requesting a construction necessitated variation to allow a walkway and a patio to remain closer to the lot line than is permitted by the Glen Ellyn Zoning Code.

1. Section 10-5-4(A)4(b) to allow a patio to remain at a distance of 1.3 feet from the property line in lieu of observing the same setback required of the principal structure on the lot, in this case 13.6 feet.
2. Section 10-5-5(C)1 - to allow a walkway to remain at a distance of 1.68 feet from the property line in lieu of the required impervious surface setback of 6.8 feet (5% of the lot width).
1. Any other zoning relief necessary to allow the patio and walkway to remain where they are depicted on the plat of survey dated November 14, 2018.

Village Planner Purvis showed an overview map of the property and stated that the subject property is located in the R2 Zoning District on the south side of Crescent Boulevard, between Riford Road and Plumb Tree Road. Village Planner Purvis stated the zoning and land use immediately surrounding the subject property is R2 single-family residential. Village Planner Purvis stated the property is an unusual-shaped triangular lot.

Village Planner Purvis stated the petitioners began construction on the walkway and patio on October 1, 2018, and on October 17, 2018, one of the Village's building inspectors came to the property to inform the property owners that a permit was needed for the construction of the patio and walkway. Village Planner Purvis stated the petitioners applied for the building permit on October 18, 2018 and were informed that a variation would be required for both the walkway and the patio on October 19, 2018. Village Planner Purvis stated a retaining wall was also constructed as part of this project, and the retaining wall does require a building permit, but does not require a variation.

Village Planner Purvis stated the property at 787 Crescent Boulevard is triangular in shape, creating a greater lot width than would be typical. Village Planner Purvis stated at the 30 foot

setback line, the width of the lot is 136 feet. Village Planner Purvis stated the impervious surface setback and accessory structure setback requirement for the walkway and patio are based upon a percentage of the lot width. Village Planner Purvis stated to make matters worse, the survey that was provided to the property owners when they purchased the property in 1996 was found to be inaccurate when they had the property resurveyed as part of this process. Village Planner Purvis stated approximately 4 feet along the east side of the property actually belongs to the property owners to the east (the Pearson's), making the property significantly more narrow on the east side of the house.

Village Planner Purvis stated prior to constructing the walkway on the east side of the property, there was a concrete walkway on the property, which is shown on the attached (inaccurate) plat of survey. Village Planner Purvis stated the walkway that was in this location would not be permitted today without a variation. Village Planner Purvis stated prior to the construction of the patio, there was a deck in this location, which would also not be permitted by today's zoning standards.

Village Planner Purvis stated the petitioners have stated that they have tried without success in the past to plant ground cover on the side of the house (where the walkway is now constructed), but were unable to get anything to grow. Village Planner Purvis stated with two large dogs, the side of the house has always been muddy. Village Planner Purvis stated the construction of the patio and walkway was an attempt to clean up the side and back of the house and to provide a path from the back and side doors of the home. Village Planner Purvis stated in order for the walkway and patio to remain in their existing location, the petitioners would need to be granted variations from the impervious surface setback requirements and the accessory structure setback requirements of the Zoning Code.

Village Planner Purvis stated if the variation is not granted for the patio and walkway to remain, the petitioners would have to remove the entire walkway and patio. Village Planner Purvis stated by Code, a walkway of approximately 1.42 feet in width would be permitted, and the patio would be constructed several feet west of the beginning of the patio door. Village Planner Purvis stated the petitioners received an estimate for approximately \$7,000 for the complete removal and disposal of the walkway and patio. Village Planner Purvis stated there would be additional cost also to put sod or some other plant material in the place of the walkway and patio.

Village Planner Purvis stated during December 11, 2018, public hearing, the neighbors to the east at 791 Crescent Boulevard (the Pearson's) did speak in opposition as parts of the concrete retaining wall from a previous project are encroaching on the 791 Crescent property. Village Planner Purvis stated at that time, the ZBA Members felt uncomfortable making a decision and asked the neighbors to come together, make an agreement and return for a continued public hearing in January.

Village Planner Purvis stated the petitioners and their neighbors have come to a formal agreement, and a draft of the agreement was in the ZBA Members' packet. Village Planner Purvis stated a signed and executed copy of the agreement has been brought to tonight's meeting. Village Planner Purvis stated to provide their support for the variations, the Pearson's have asked that the conditions within the agreement, of which there are five, be placed on the approval of the variations, and the petitioners have agreed to these terms.

Questions from the Zoning Board of Appeals

ZBA Member Miller asked to see a picture of the backyard and asked how much was previously there that the petitioners have restored. Village Planner Purvis showed a picture of the backyard and stated there was a wood deck and walkway previously in the locations of the patio and walkway. Village Planner Purvis stated since both these items were there when the home was purchased, the petitioners thought it would be fine to replace both of these.

ZBA Member Jones asked about the two different surveys. Village Planner Purvis stated the original survey was given to the petitioners when they purchased the 787 Crescent property, but this was an inaccurate plat that was certified by a licensed surveyor. Village Planner Purvis stated, as part of this project the petitioners had their property resurveyed. Village Planner Purvis stated the fence between the two properties faced as it was the petitioners' fence as the fence hardware faced the petitioners' property. Village Planner Purvis stated it was discovered with the new survey that the fence is actually on the Pearson's property.

Mr. Scott Pearson stated when they bought their home, they had the survey done. Mr. Pearson stated it was their understanding that the fence was always on their property.

ZBA Member Jones asked if this survey error would have ever been caught because it was done by a licensed surveyor to which Village Planner Purvis stated no. She continued, the Village would have accepted the Plat of Survey since it was stamped by a licensed surveyor and would have no reason to assume something was wrong with it.

Village Planner Purvis stated as a part of the 2016 project, the petitioners did a reconstruction of the driveway and added a concrete retaining wall. Village Planner Purvis stated the Village accepted the original survey that the petitioners were given when the property was originally purchased. Village Planner Purvis stated with the new survey, it looks like there are some encroachments and showed the pictures of the concrete retaining wall.

ZBA Member Micheli asked who did the inaccurate survey. Mr. John Keel stated Brian Gold did. ZBA Member Micheli asked who did the new survey. Mr. Pearson stated Richard Steinbrecher did.

ZBA Member Miller asked which survey is #1 in the proposed agreement between the neighbors, based on. Village Planner Purvis stated it is the updated survey.

ZBA Member Micheli asked what permeable surfaces can be put down as a walkway that would not require a variance. Village Planner Purvis stated the Village changed the Code a few years so there has to be a higher percentage of impervious surface in order to not have to meet the impervious surface setback. ZBA Member Miller asked if everything would be delayed if the ZBA required a different paver. Village Planner Purvis stated they would have to come back to the ZBA with the redesign.

ZBA Member Micheli asked about the height of the fence. Village Planner Purvis stated the fence is a separate request to be submitted by the Pearson's, and it is not in front of the ZBA tonight. ZBA Chairperson Constantino stated he was going to emphasize this because if the ZBA does recommend the proposal as presented, this is not indicative of any future decision of the Planning and Development Department in review of a possible fence and any variation for this possible fence.

Mrs. Duska Pearson stated her and her husband did not feel it would be the right thing to bring the fence issue to this discussion tonight as they have no intention of sneaking this in.

ZBA Member Jones asked about the proposed spots to be corrected on the retaining wall. Ms. Leisha McCready stated as a part of the proposed agreement, they are willing to remove a portion of their concrete retaining wall, built in 2016 and was permitted according to their survey, from the Pearson's property at the petitioners' expense. Ms. McCready stated they already have quotes for this and will do this as soon as the weather allows. Ms. McCready stated they are proposing to shave parts of the wall down so that no part of the concrete wall is on the Pearson's property.

Petitioners' Presentation

John Keel, co-owner of the home at 787 Crescent Boulevard, showed pictures of the 2016 project with the driveway and retaining wall and the current project. Mr. Keel stated they feel there are many hardships created due to the triangular shape of the lot. Mr. Keel stated the front of the property is very long, and this then requires greater than normal setbacks. Mr. Keel stated if they do a code compliant walkway, they are only left with 1.42 feet. Mr. Keel stated there is a large canopy of trees, and historically, the ground turns into mud so a walkway is better than vegetation. Mr. Keel stated they feel not having usable space in the backyard would detract from their home, and they feel the proposed project is consistent with what other homes have and what their home was originally designed to have.

Additional Questions from the Zoning Board of Appeals

ZBA Member Jones asked if they are trying to address drainage also with the patio. Mr. Keel stated they are not addressing any drainage issues. Ms. McCready stated they are just trying to clean up the area and be consistent from one space to the other. ZBA Member Jones asked if this is the only exit at the rear of the home. Ms. McCready stated there is a door that exits out of the garage, but you have to get through their stuff to get to it. Ms. McCready stated the addition at the back of the home was put on by previous owners, and this is the only exit from the lower section of the home to the outside. ZBA Member Jones asked if there is a safety factor. Ms. McCready stated they need to be able to open the sliders and get out of the home.

ZBA Member Whalls asked about drainage issues or pools of water. Ms. McCready stated from October until now, they have no history on this as the wall was never a factor as it was not discussed. Village Planner Purvis stated the retaining wall does not require a variation. Village Planner Purvis stated the three structures are regulated differently – one requirement for the patio, one requirement for the walkway and another requirement for the retaining wall. Village Planner Purvis stated the retaining wall does meet the requirements, and the Village's Stormwater Engineer has no issue with the retaining wall. Village Planner Purvis stated only the walkway and patio require a variation. Village Planner Purvis stated she has the email from the Village's Stormwater Engineer, Ray Ulrich, who reviewed the project for compliance with the stormwater regulations and found the project to be adequate as proposed.

Mrs. Pearson stated there was some digging up to their fence, but they do not think there is any issue with this. Mrs. Pearson stated this is one of the points that would be remedied if it is altered with the construction of the patio. Mrs. Pearson stated they are confident this would be addressed through the agreement with their neighbors.

ZBA Member Micheli referred to #5 on the proposed agreement and stated he is exceptionally uncomfortable with quid pro quo for a variance which the ZBA has not seen. ZBA Member Micheli asked if they would give this point up. Mr. Pearson stated they would not. Mr. Pearson stated they understand a variation for a possible fence is not in front of the ZBA at this time, but they are only asking for the neighbors' support and not the ZBA's support. ZBA Member Micheli stated if the ZBA recommends the variance, the agreement would need to go through the Village's Attorney. Village Planner Purvis stated from her understanding, as long as the petitioners agree to whatever conditions are placed on an ordinance even if the conditions do not have to do with the particular variation, the ZBA can move forward with it. ZBA Member Micheli stated if conditions are incorporated into the variation, it follows the land forever. Village Planner Purvis stated the conditions are a part of this variation. Village Planner Purvis stated the conditions do not really follow the land, but the setbacks and zoning relief follow the

land. ZBA Chairperson Constantino stated the individuals are agreeing to be bound by the terms and conditions of this agreement. ZBA Chairperson Constantino stated he will ask Ms. McCready, Mr. Keel and the Pearson's to ensure they are all fine with this. ZBA Chairperson Constantino stated this will not be binding to any future owners of these properties. ZBA Member Micheli stated the addresses should be struck from the agreement and replaced with the homeowners' names. Village Planner Purvis stated she is fine with this if the ZBA would be more comfortable with this. ZBA Member Micheli stated he is concerned about the next owners of the homes as the part about the fence could come back to haunt the ZBA in some way, shape or form. There was a discussion regarding the proposed condition about the fence.

ZBA Member Micheli stated he would be comfortable with removing the addresses from the agreement and using the homeowners' names instead. ZBA Member Miller stated he feels the addresses need to be in the agreement in some spot. ZBA Member Micheli stated he does not think the Village can or should give consideration to the Pearson's possible future request other than to note there is an agreement with the neighbors, and no further than that. ZBA Chairperson Constantino stated he does not think the ZBA recommending this variance with these conditions will place any burden or obligation on the ZBA or the Village as the agreement is personal in nature.

ZBA Member Micheli asked if the Pearson's will expect any consideration from the ZBA due to the fact that the Pearson's gave way on this request when or if they come to the ZBA with a variance request. Mr. Pearson stated he thinks the neighbors will make a statement to the fact that they are supportive of the fence height. Mr. Pearson stated from the neighbors' prospective, they would be the most affected by a possible fence. Mrs. Pearson stated that is why they did not submit a variance application for the fence tonight as it would seem this was their agenda. Village Planner Purvis stated the ZBA asked the neighbors to come to an agreement because the Pearson's were the ones most affected by the petitioners' variation requests. ZBA Member Whalls stated the ZBA asked the neighbors to come together on this because it seemed more legal than advisory.

ZBA Chairperson Constantino thanked everyone for their efforts in coming to this agreement. ZBA Chairperson Constantino asked if Ms. McCready and Mr. Keel understand that the agreement and terms of the agreement would be conditions if the ZBA recommends the variance request is approved. Ms. McCready and Mr. Keel both stated yes. ZBA Chairperson Constantino asked the Pearson's the same question for the record. Mr. and Mrs. Pearson stated yes.

ZBA Member Jones asked to see the overview picture of both properties. ZBA Member Jones asked if the setbacks at 791 Crescent are the reverse of the setbacks at 787 Crescent. Village Planner Purvis stated the lot width at the 30-foot setback for 791 Crescent is much smaller, so

they would actually have an advantage in terms of accessory structure setback requirements. However, fences are regulated differently and can be placed nearly at the lot line.

Findings of Fact

ZBA Member Jones stated that petitioners Leisha McCready and John Keel, owners of the property located at 787 Crescent Boulevard, are seeking construction necessitated variations to Sections 10-5-4(A)4(b) and 10-5-5(C)1 of the Village Code to allow a patio to remain at a distance of 1.3 feet from the property line in lieu of the required 13.6 feet and to allow a walkway to remain at a distance of 1.68 feet from the property line in lieu of the required 6.8 feet (5% of the lot width). ZBA Member Jones stated 787 Crescent Boulevard is an odd-shaped lot, and the original survey done on the property was incorrect.

ZBA Member Jones stated in 2016, a retaining wall was built with two points of encroachment on the property at 791 Crescent Boulevard due to the original survey being incorrect. ZBA Member Jones stated the petitioners have agreed to remove these two points to the east of the property line in order to have the support of their neighbors on their variation requests. ZBA Member Jones stated there was a stormwater review done through the Village's Stormwater Engineer, and this was approved.

ZBA Chairperson Constantino stated the petitioners and the Pearson's, owners of 791 Crescent Boulevard (the property to the east of 787 Crescent Boulevard), met privately after the December 11, 2018 ZBA meeting and agreed to certain terms relating to the present improvements on the property and future actions by the petitioner in removing a portion of a retaining wall. ZBA Chairperson Constantino stated these terms also say the petitioners will give support for a potential variation if necessary in the future for a fence that might be constructed by the Pearson's. ZBA Chairperson Constantino stated the Pearson's have agreed to support the proposed variation provided that the terms of the proposed signed agreement given to the ZBA are included in the ZBA's recommendation that will be a part of the record.

Motion

ZBA Member Whalls moved, seconded by ZBA Member Micheli, that the Zoning Board of Appeals recommended approval of the Findings of Fact.

The motion carried unanimously with a voice vote.

Additional Comments from the Zoning Board of Appeals

ZBA Member Miller stated the two parties did a great job coming to agreement on this, and everyone seems happy about this. ZBA Member Miller stated he thinks the ZBA's best course is to approve the recommendation for the variance with additional conditions.

ZBA Member Jones stated he is in support of this. ZBA Member Jones stated there are two ways of remedying the issue in the yard – either a walkway or cut down the trees. ZBA Member Jones stated he likes all the neighbors working together to fix the situation with the retaining wall to put back the property right.

ZBA Member Whalls stated between the ZBA and the Village's help, the neighbors have cooperated on this and worked it out themselves. ZBA Member Whalls stated he is in favor of this.

ZBA Member Micheli stated he sees a strong basis to grant the variations just based on the unique circumstances and hardships regardless of the agreement between the neighbors. ZBA Member Micheli stated there were incorrect surveys and mixed use of land. ZBA Member Micheli stated the agreement between the neighbors is nice to see. ZBA Member Micheli stated he is uncomfortable with the addresses being used in the agreement and would rather see the homeowners' names.

ZBA Chairperson Constantino stated he supports this recommendation that the Village Board grant the variations as requested. ZBA Chairperson Constantino stated there is a hardship with the triangular lot, and this creates a need for wider setbacks. ZBA Chairperson Constantino stated an 18-inch wide walkway is impractical. ZBA Chairperson Constantino stated the two parties were burdened by inaccurate surveys that were off by four feet. ZBA Chairperson Constantino stated Code-compliant improvements would be impractical and not useful. ZBA Chairperson Constantino stated at the ZBA's suggestion, the petitioners and the neighbors agreed among themselves as of how to resolve the issues presented.

Motion

A motion was made by ZBA Member Jones and seconded by ZBA Member Michaeli to close the public hearing for 787 Crescent Boulevard. The motion carried unanimously with a voice vote.

A motion was made by ZBA Member Miller and seconded by ZBA Member Micheli.

Having considered the application of Leisha McCready and John Keel for the zoning variation to allow a walkway and patio to remain closer to the lot line than permitted by Code on the property located at 787 Crescent Boulevard, the Zoning Board of Appeals hereby adopts the Findings of Fact in the petitioners' application packet and presented by the petitioners at the December 11, 2018 and January 22, 2019 Zoning Board of Appeals public hearings as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends approval of the following:

1. Section 10-5-4(A)4(b) to allow a patio to remain at a distance of 1.3 feet from the property line in lieu of observing the same setback required of the principal structure on the lot, in this case 13.6 feet.
2. Section 10-5-5(C)1 - to allow a walkway to remain at a distance of 1.68 feet from the property line in lieu of the required impervious surface setback of 6.8 feet (5% of the lot width).
3. Any other zoning relief necessary to allow the patio and walkway to remain where they are depicted on the plat of survey dated November 14, 2018.

Due to the following unique circumstances:

1. The odd-shaped triangular lot causes difficulty with the setbacks; and
2. An inaccurate plat of survey.

The Zoning Board of Appeals applied the following conditions as well:

1. The Zoning Board of Appeals approval of these conditions does not imply acceptance of the fence replacements at 791 Crescent Boulevard. Furthermore, the conditions apply only between the petitioners and the Pearson's.
2. The portion of the concrete retaining wall associated with 787 Crescent Blvd currently reflected on the 791 Crescent Blvd Plat of Survey dated October 18, 2018 (the Survey) as on or east of the property line is moved or removed from the property at 791 Crescent Blvd no later than 30 April 2019 (or earlier if weather conditions allow) as a condition of granting the variance.
3. The 787 Owners agree to remedy any damage caused to property at 791 Crescent Blvd in the construction of the 787 Crescent Boulevard patio and walkway project.
4. The 787 Owners agree that we, the 791 Owners, are permitted to remove the existing fence and place a new fence on our property that is consistent with the Glen Ellyn Zoning Code other than the variances described in condition 5 of their agreement below.
5. The 787 Owners agree to provide the 791 Owners and their delegates reasonable access to construct the new fence described in their agreement condition 3 above, including access through 787 Crescent Blvd and on the side of 787 Crescent Blvd, all as reflected in the Survey.

6. The 787 Owners agree to support the 791 Owners in seeking any required variances for new fence construction which would allow for a six (6) foot fence height along the property line, of the type desired by the 791 Owners, consistent with the existing fence dimensions.

The motion carried with five (5) "yes" votes. The "yes" votes are as follows: ZBA Members Jones, Micheli, Miller, Whalls and Chairperson Constantino.

ZBA Chairperson Constantino stated the ZBA recommended this unanimously and will now go to the Village Board for approval, and Village Planner Purvis can tell you when this will be. ZBA Chairperson Constantino stated he advises the petitioners coming to the Village Board meeting just in case this variance request is not on the Consent agenda.

Mrs. Pearson asked if they can put their fence variance request in the interim.

ZBA Member Micheli stated he does not think this will make a difference. ZBA Member Micheli stated he personally is generally uncomfortable with the organization of big fences so he would like to see better materials to make up the difference and add more to the neighborhood.

ZBA Member Miller stated the ZBA does not have the right to dictate to the Pearson's what materials they use on this fence. ZBA Member Michaeli stated he is not dictating, but only stating his preference.

Village Board Trustee Report

None

Staff Report

None

Adjournment

At 8:02 p.m., a motion was made by ZBA Member Jones and seconded by ZBA Member Micheli to adjourn the meeting. The motion carried unanimously by a voice vote.

Respectfully submitted,

Debbie Solomon
Recording Secretary